

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 11-59
Acceleration of Broadband Deployment	)	
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**REPLY COMMENTS OF THE CITY OF DUBLIN, OHIO**

The City of Dublin, Ohio (hereinafter referred to as “Dublin”) files these reply comments in response to the numerous comments filed pursuant to the Commission’s Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, Dublin again urges the Commission to refrain from regulating local right-of way and facility management practices and charges.<sup>1</sup> Dublin has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission will undoubtedly disrupt this process at substantial cost to local taxpayers and to the local economy. Such a result would undermine the City’s objectives to facilitate broadband deployment while maintaining the competitive market it has already created. Accordingly, further federal regulation in this area will only impede widespread broadband deployment at the local level, not encourage the acceleration of its development.

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

As previously stated in its initial comments filed with the Commission, Dublin has successfully managed its property to encourage deployment of many broadband networks to date. As a result, broadband service is available to all households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community encourages broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to avoid problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. For example, Dublin has established its Dublink conduit network, an innovative networking system that allows service providers to efficiently use Dublin's existing infrastructure without the delays and heavy costs commonly incurred during installation.

**I. DUBLIN'S LOCAL POLICIES AND PRACTICES REMOVE OBSTACLES ASSOCIATED WITH PROVIDERS' ACCESS TO PUBLIC RIGHTS OF WAY**

As stated previously, Chapter 98 of the Dublin Code of Ordinances governs right-of-way management and prescribes the application procedure for persons desiring to operate structures or facilities within the right-of-way. Amongst other things, this Chapter establishes an annual fee structure based upon the miles of business district right-of-way each permittee occupies. Dublin, however, has always waived all annual right-of-way fees except for permit application fees. This fee waiver is made possible because of the considerable expertise the City has developed in managing broadband providers and other occupants within its right-of-way, which keeps maintenance costs at a minimum.

One of the industry's chief complaints is that local right-of-way policies require providers to pay excessive right-of-way, registration, and other fees. For example, Verizon and Verizon Wireless generally claim that local right-of-way regulation results in unreasonably high compliance costs, acknowledging that the locality incurs the majority of its costs during the permitting and construction phases of a project. However, in Dublin, the advent of the DublinLink system has eliminated most of the costs associated with project construction as broadband providers make use of the City's existing infrastructure without having to further disrupt the right-of-way. The innovative DublinLink system has allowed for city-wide broadband deployment while minimizing the usual construction and costs that accompany such development. Further, Dublin has never assessed penalty fees on broadband providers. As a result, Dublin's right-of-way fees have decreased, and its management policies have not impeded broadband deployment. Contrarily, Dublin's policies have fostered greater broadband development by creating a very inviting atmosphere for providers.

Other municipalities have also commented in response to the Commission's NOI providing examples of how they have successfully managed the rights-of-way to allow for deployment of broadband and wireless networks. These municipalities have been able to achieve nearly universal deployment through their own creative and efficient management. Still, these examples do not go quite as far as Dublin has gone in eliminating right-of-way management fees and reducing construction and installation costs. These diverse examples of efficient right-of-way management that have fostered widespread broadband and wireless deployment could only have been achieved through local government involvement. The local needs and exigencies of New York City obviously differ from those present in Dublin, which further differ from other municipalities. Centralizing right-of-way management in an attempt

to increase broadband deployment would preclude local authorities from tailoring their systems to their own local needs, and eliminate the aforementioned efficiency.

Essentially, Dublin has achieved universal deployment of broadband facilities by competing service providers through the use of existing regulatory tools. Local governments are best positioned to balance local needs and policy objectives specific to each individual community. Enacting federal rules or guidelines in this area will undermine local governmental authority, and negatively affect areas such as Dublin, which have established a competitive and broadband-friendly system.

## **II. LOCAL RIGHT-OF-WAY MANAGEMENT AND CONTROL**

In response to the Commission's NOI, the City of Dublin further agrees with the City of Pittsburgh, Pennsylvania regarding local right-of-way management and control.

As Pittsburgh noted in its comments previously submitted to the Commission, local right-of-way practices are numerous and reflect many different local public policy interests. Local governments are challenged with the burden of balancing their own interests with those of private right-of-way occupants in order to create a safe and effective regulatory scheme, which also allows for the protection and preservation of a significant public asset. Public safety is paramount to establishing such a scheme. Dublin's regulatory structure helps to promote public safety by eliminating the need to repeatedly disrupt City rights-of-way, as providers may use the existing infrastructure to safely deploy their own broadband services within said rights-of-way. This further lessens the need to dig additional trenches and make street cuts, which helps prevent delay in the processing and issuance of right-of-way permits while minimizing costs. As a result, this local regulatory scheme balances Dublin's policy goals with private interests.

Moreover, Dublin has a strong interest in maintaining its streets and roads in good condition. Such maintenance is purely a matter of local concern as streets and roads of different municipalities invariably differ from each other. Such factors as terrain, weather, method of construction and composition, the existence of sidewalks, and location differently affect municipalities' ability to manage rights-of-way. In geographic areas such as the Midwest, right-of-way maintenance can be particularly cumbersome during the winter months.

Therefore, Dublin, as well as other municipalities, must balance multiple right-of-way public policy goals that are tailored to the particular conditions of the City. These goals are inherently local and reflect the individual and unique conditions of the local community. As such, imposing a blanket regulatory scheme on a national scale is inconsistent with local governmental interests. Imposing such a scheme will only undermine these local interests and inhibit broadband deployment as local governments struggle to integrate a national regulatory scheme into their local practices.

### **III. POSSIBLE COMMISSION ACTION**

As noted above, Dublin strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for local communities and it would have the potential to undermine important local policies. The State of Ohio recognizes this reserving the management, regulation, and administration of public ways to municipal corporations. *See* O.R.C. § 4939.

Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. For example, Dublin's practice of waiving all annual right-of-way fees creates an inviting and competitive market. Commission regulation of charges for right-of-way use would significantly alter Dublin's ability to continue these practices and provide the types of services it currently does. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

## **CONCLUSION**

The City of Dublin, Ohio urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in Dublin, our policies and procedures are designed to protect and balance important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here. To the contrary, universal broadband development has flourished in Dublin's competitive market, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

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